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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,463	12/20/2005	Johannis Friso Rendert Blacquiere	NL 030757	8223

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EXAMINER

DILLON, SAMUEL A

ART UNIT

PAPER NUMBER

2185

MAIL DATE

DELIVERY MODE

10/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/561,463

Applicant(s)

BLACQUIERE ET AL.

Examiner

SAMUEL DILLON

Art Unit

2185

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 3/13/07
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The Examiner acknowledges the applicant's submission of the preliminary amendment dated December 20, 2005. Per the amendment, Claim 3 has been amended. The instant application having Application No. 10/561,463 has a total of 13 claims pending in the application; there are 2 independent claims and 11 dependent claims, all of which are ready for examination by the examiner.

I. INFORMATION CONCERNING OATH/DECLARATION

2. The applicant's oath/declaration has been reviewed by the examiner and is found to conform to the requirements prescribed in 37 C.F.R. ' 1.63.

II. STATUS OF CLAIM FOR PRIORITY IN THE APPLICATION

3. As required by M.P.E.P. ' 201.14(c), acknowledgment is made of applicant's claim for priority based on an application filed in June 23, 2003.

III. ACKNOWLEDGEMENT OF INFORMATION DISCLOSURE STATEMENT

4. The information disclosure statement (IDS) submitted on March 13, 2007 is in compliance with the provisions of 37 CFR 1.97. As required by M.P.E.P. ' 609 (C), the applicant's submission of the submitted IDS is acknowledged by the examiner and the cited references have been considered in the examination of the claims now pending. As required by M.P.E.P. ' 609 C(2), a copy of the PTOL-1449 initialed and dated by the examiner is attached to the instant office action.

IV. OBJECTIONS TO THE APPLICATION

5. **Claims 1-13** are objected to because of the following informalities:

- a. Claim 1 begins "*Device*" and should be amended to begin "*A device*".
- b. Claims 2-11 begin "*Device*" and should be amended to begin "*The device*".
- c. Claim 11 reads "*include a command for a indicating*" and should be amended to read "*a command for indicating*".
- d. Claim 12 begins "*Method*" and should be amended to begin "*A method*".
- e. Claim 13 begins "*Computer*" and should be amended to begin "*A computer*".

Appropriate correction is required.

6. **Claim 13** is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. If the Applicant would like to claim a computer program product that corresponds to Claim 12, then Claim 13 should be amended to be an independent claim similar to Claim 12 with the additional limitations included in Claim 13. Appropriate correction is required.

V. REJECTIONS NOT BASED ON PRIOR ART

Claim Rejections - 35 USC ' 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. **Claim 7** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. **Claim 7** reads "*on substantially adjacent physical addresses*". The term "*substantially*" is a relative term which renders the claim indefinite. The term "*substantially*" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For the purposes of further examination, the Examiner will interpret the logically continuous series of blocks being on physical addresses, but not requiring any specific locality of the physical addresses with respect to each other.

Claim Rejections – 35 USC ' 101

9. The following is a quotation of 35 U.S.C. 101:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. **Claim 13** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. **Claim 13** is directed towards a computer program product for recording information, or software, per se. Software does not fall within any of the four categories of statutory subject matter, and as such, the claim appears directed towards non-statutory subject matter.

VI. REJECTIONS BASED ON PRIOR ART

Claim Rejections - 35 USC ' 102 - Shagam

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1, 2, 5, 7-9 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Shagam (*US Patent 6,205,529*).

13. As per Claims 1 and 12, but more specifically to Claim 1, Shagam disclose(s) a device (*entirety of figure 1a*) for recording information in blocks having logical addresses in a storage space on a record carrier, which device comprises

recording means (22) for recording marks in a track on the record carrier
representing the information (*disk subsystem 30, figure 1a*), and

control means (20) for controlling the recording by locating each block at a
physical address in the track (*control logic 10, figure 1a*), the control means comprising
interfacing means (31) (*interface portion of control logic 10 that communicates
with host 00, figure 1*) for communicating with a host system (*host 00, figure 1*) by
exchanging commands and information,

record carrier status means (32) for detecting a record carrier update status in
which information stored on the record carrier is to be changed (*control logic 10
generally controls updates to the disk, and also controls the copy function, all of which
are commands or functions that are run remotely from the host; therefore, there is
inherently a portion of control logic 10 that detects whether there is a command or
function to be run as commanded by the host, column 4 lines 6-11*), and

update means (33) (*defragmentation program 04, figure 1a*) for initiating an unmount-mount sequence in dependence on the record carrier update status, the unmount-mount sequence comprising an unmount process for, via the interfacing means, forcing the host system to complete pending actions and write any information maintained by the host to the record carrier (*the host generally communicates updates and writes to control logic 10, figure 1a, column 4 lines 6-11*), an update process for said changing of information on the record carrier (*copy function, figure 2 elements 260-290*), and a mount process for, via the interfacing means, forcing the host system to accept the changed information by retrieving from the updated record carrier any information required by the host (*signal successful completion 310, once the copy is completed the host is 'forced' to accept the moved information if that information is read in the future, figure 2*).

14. As per **Claim 2**, **Shagam** disclose(s) the device as claimed in **Claim 1**, wherein the update means (33) are adapted for including in the update process changing the size of the storage space (*figures 2, 4a-4d*).
15. As per **Claim 5**, **Shagam** disclose(s) the device as claimed in **Claim 1**, wherein the record carrier status means (32) are for detecting a series of blocks having a continuous logical address range to be updated for recording in a corresponding contiguous physical address range (*figures 2, 4a-4d*);).
16. As per **Claim 7**, **Shagam** disclose(s) the device as claimed in **Claim 1**, wherein the update means (33) are adapted for including in the update process rewriting blocks that are part of a logically continuous series of blocks on substantially adjacent physical addresses (*figures 2, 4a-4d*).

17. As per **Claim 8**, Shagam disclose(s) the device as claimed in Claim 7, wherein the update means (33) are adapted for including in the update process adapting file management information (*figure 2*).

18. As per **Claim 9**, Shagam disclose(s) the device as claimed in Claim 8, wherein the update means (33) are for detecting a free location on the record carrier, for retrieving previously recorded blocks in a physical address range, for recording said retrieved previously recorded blocks in the free location, and for updating file system information indicating the logical addresses of said retrieved previously recorded blocks as part of a file (*figures 2, 4a-4d*).

19. As per **Claim 11**, Shagam disclose(s) the device as claimed in Claim 1, wherein the interfacing means (31) are adapted to include a command for a indicating a period of time required for the update process, in particular a conditional unmount request (*an initiation of the copy command indicates that for a period of time this copy command must be executed, Figure 2 elements 260-290*).

20. As per **Claim 13**, Shagam disclose(s) a computer program product for recording information, which program is operative to cause a processor to perform the method as claimed in Claim 12 (*defragmentation program 04, column 4 lines 1-20*).

Claim Rejections - 35 USC ' 103 – Shagam and Deyring

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. **Claims 3, 4, 6 and 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Shagam (*US Patent 6,205,529*) in view of Deyring (*US Patent 5,075,804*).

23. As per **Claim 3**, Shagam disclose(s) the device as claimed in **Claim 1**, but not the further limitations of **Claim 3**. Deyring discloses defect management means (34) for detecting defects and maintaining the defect management information in defect management areas on a record carrier (*steps 84-88, figure 3a*), and changing the content, size and/or location of the defect management areas (*steps 70-82, figure 3a*).

Shagam and Deyring are analogous art in that they deal with formatting hard disk drives. At the time of the invention, it would have been obvious to modify Shagam to use Deyring's defect management table to skip defective sectors. The motivation for doing so would have been that it substantially reduces the amount of defective data on the disk (column 4 lines 4-20). Therefore, it would have been obvious to modify Shagam to use Deyring's defect table and skipping for the benefit of data integrity, to obtain the invention of **Claim 3**.

24. As per **Claim 4**, Shagam and Deyring disclose(s) the device as claimed in **Claim 3**, wherein the defect management information at least includes remapping information indicative for translating a logical address initially mapped to a physical address exhibiting a defect to an alternate physical address in a defect management area, and wherein the update means (33) are adapted for including in the update process changing the remapping information (*Deyring, steps 94-106, figure 3a*).

25. As per **Claim 6**, Shagam and Deyring disclose(s) the device as claimed in **Claim 5**, wherein the record carrier status means (32) are for detecting a recording indicator in a recording command which includes a series of blocks of data (*column 1 lines 13-20; column 4 lines 1-20*). Shagam does not explicitly disclose these blocks representing real-time information, in particular video information. However these differences are only found in the nonfunctional

descriptive material and do not change how the invention functions. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Circ. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to store real-time information or video information because the subjective interpretation of the data does not patentably distinguish the claimed invention.

26. As per Claim 10, Shagam and Deyring disclose(s) the device as claimed in Claim 1, wherein the update means (33) are adapted for including in the update process adapting record carrier information (*figures 2, 4a-4b*). Shagam does not explicitly disclose this information being format information, in particular the disc type or the version of the format of the recorded information. However these differences are only found in the nonfunctional descriptive material and do not change how the invention functions. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Circ. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify format information, disc type or the format version information because the subjective interpretation of the data does not patentably distinguish the claimed invention.

X. CLOSING COMMENTS

a. STATUS OF CLAIMS IN THE APPLICATION

27. The following is a summary of the treatment and status of all claims in the application as recommended by M.P.E.P. '707.07(i):

a(1). CLAIMS REJECTED IN THE APPLICATION

28. Per the instant office action, Claims 1-13 have received a first action on the merits and are subject of a first action non-final.

b. DIRECTION OF FUTURE CORRESPONDENCES

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Dillon whose telephone number is 571- 272-8010. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sanjiv Shah can be reached on 571-272-4098. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

IMPORTANT NOTE

30. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SAD

Sam Dillon
Examiner
Art Unit 2185

/Sanjiv Shah/

Supervisory Patent Examiner, Art Unit 2185